

OBVIOUSNESS-TYPE DOUBLE PATENTING REJECTION

Claims 11-20 stand rejected under the judicially-created doctrine of obviousness-type double patenting over claim 9 of *Lindholm et al.* on the grounds set forth in paragraph 1 of the Official Action. This rejection is respectfully traversed.

The present application has an effective U.S. filing date of February 2, 2000. Thus, the term of any patent issuing from the present application would run until February 2, 2020.

By contrast, the effective U.S. filing date of *Lindholm et al.* is September 6, 2000. Thus, the patent term thereof runs until September 6, 2020.

From the above, it is readily apparent that issuance of a patent from the present application will not extend the term of the *Lindholm et al.* patent. Thus, a double patenting rejection is not appropriate under the current circumstances.

Moreover, a rejection based on obviousness-type double patenting must include the same analysis as would be required for a rejection based on 35 U.S.C. §103(a). Thus, the factual inquiries set forth in *Graham v. John Deere* must be followed. In light of the above, it is respectfully submitted that the grounds for rejection clearly fail to satisfy the requirements of the analytical framework established by *Graham v. John Deere*. In particular, assertions that the presently claimed invention "reads on" claim 9 of *Lindholm et al.* is clearly inadequate to establish a *prima facie* case of obviousness-type double patenting.

However, in order to advance prosecution, applicants submit herewith a duly executed Terminal Disclaimer, thereby obviating the above-noted grounds for rejection.

Reconsideration and withdrawal of the rejection is respectfully requested.

CONCLUSION

From the foregoing, further and favorable action in the form of a Notice of Allowance is earnestly solicited. Should the Examiner feel that any issues remain, it is requested that the undersigned be contacted so that any such issues may be adequately addressed and prosecution of the instant application expedited.

Respectfully submitted,

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